



**BOARD OF ADJUSTMENT AGENDA
REGULAR MEETING
MONDAY, JUNE 29, 2015**

MEETING: 4:30 P.M. - CITY COUNCIL CHAMBERS

1. Call to Order.
2. Roll Call.
3. Public comment period. The general public is invited to address the Board regarding any item on this agenda. The overall and individual speaking time allotments may be limited by the Chair.
4. Dispense with the reading and approve the minutes of the May 26, 2015, Regular Meeting as prepared.
5. Consider a request of Victory Lake Marine, Inc., the owner of approximately 2.6 acres located at 1709 Miramar Circle, for approval of a Variance to Section 906.b., Fremont Zoning Ordinance, pertaining to pavement and drainage..
6. Adjournment.

THIS MEETING WAS PRECEDED BY PUBLICIZED NOTICE IN THE FREMONT TRIBUNE, THE AGENDA DISPLAYED IN THE LOBBY OF THE MUNICIPAL BUILDING AND POSTED ONLINE AT WWW.FREMONTNE.GOV IN ACCORDANCE WITH THE NEBRASKA OPEN MEETINGS ACT, A COPY OF WHICH IS POSTED CONTINUALLY IN THE COUNCIL CHAMBERS FOR PUBLIC INSPECTION, AND SAID MEETING IS OPEN TO THE PUBLIC. A COPY OF THE AGENDA WAS ALSO KEPT CONTINUALLY CURRENT AND AVAILABLE TO THE PUBLIC IN THE PRINCIPLE OFFICE OF THE DEPARTMENT OF PLANNING, 400 EAST MILITARY AVENUE. THE BOARD OF ADJUSTMENT RESERVES THE RIGHT TO ADJUST THE ORDER OF ITEMS ON THIS AGENDA.

**BOARD OF ADJUSTMENT MINUTES
REGULAR MEETING
MAY 26, 2014 – 4:30 PM**

PRESENT: Chairman, Phil Bang, Members, Cathy Casey, Brad Fooker, and Skip Sawyer, Planning Director, Troy Anderson, and Chief Building Inspector, Don Simon

ABSENT: Member, Curt Friedrich

1. Call to Order. Chairman Bang called the meeting to order at 4:30 p.m.
2. Roll Call. A roll call showed four (4) members present and one (1) absent – a quorum was established.

Chairman Bang then read the following statement: This meeting was preceded by publicized notice in the Fremont Tribune, the agenda displayed in the lobby of the Municipal Building and posted online at www.fremontne.gov in accordance with the Nebraska open meetings act, a copy of which is posted continually in the council chambers for public inspection and said meeting is open to the public. A copy of the agenda was also kept continually current and available to the public in the principle office of the Department of Planning, 400 East Military Avenue. The Planning Commission reserves the right to adjust the order of items on this agenda. This meeting is hereby declared to be duly convened and in open session.

3. Minutes of the December 29, 2014, Regular Meeting.

Chairman Bang read the item into the record. Hearing no discussion, Bang entertained a motion.

Motion: It was moved by Member Sawyer, and seconded by Member Fooker, to dispense with the reading of the minutes and approve the minutes as provided. A roll call vote showed all members present voting aye – the motion carried unanimously.

4. Public comment period.

Chairman Bang opened the floor to public comments.

Hearing none, Bang closed the floor and proceeded onto the regular agenda.

5. Consider a request of Fremont Family YMCA, the owner of approximately 2.1 acres located at 810 North Lincoln Avenue, for approval of a Variance to Section 903, Fremont Zoning Ordinance, pertaining to off-street parking requirements.

Chairman Bang read the item into the record. Bang then proceeded to open the floor to appellant arguments. Representative of the applicant, Jerry Rinne, presented their case, providing background information and elaborating on future development plans. Rinne also informed the Board of the Purchase and Development Agreement made with the City which recognized the buyer's efforts to provide reasonable accommodations for parking but that the governing body

believed that there was sufficient factual support for a variance. Rinne also informed the Board that a shared parking agreement provided off-premise parking accommodations on adjacent properties owned by the City. Hearing nothing further from the Applicant, Bang closed the floor to appellant arguments and proceeded to open the floor to public hearing. Scott Getzschman, resident of 2122 Pearl Street, spoke in favor of the applicant's request. Hearing no other comments from the public, Bang closed the floor to public hearing and opened the floor to appellee arguments. Director Anderson stated that in light of the agreements made by and between the local legislative body and the appellant, Staff takes no position regarding the request. Hearing no other comments from City Staff, Bang closed the floor to appellee arguments and opened the floor to Board discussion and action. Hearing no discussion, Bang entertained a motion.

Motion: It was moved by Member Sawyer, and seconded by Chairman Bang, to approve the reduction in the number of parking stalls to that which is shown on the site plan provided to the Board as part of the hearing. A roll call vote showed all members present voting aye – the motion carried unanimously.

Hearing no further business, Chairman Bang adjourned the meeting.

APPROVED:

Phil Bang, Chairman

ATTEST:

Troy Anderson, Planning Director

Staff Report

TO: Board of Adjustment
FROM: Troy Anderson, Director of Planning
DATE: June 29, 2015
SUBJECT: Variance Request – 1709 Miramar Cir.

Background: The applicant and owner of approximately 2.6 acres located at 1709 Miramar Circle, Victory Lake Marine, Inc., is requesting approval to vary from paving requirements.

Staff recommends disapproval because the hardship claimed by the applicant is both self-inflicted and pecuniary (case law relating to self-inflicted and pecuniary variances is provided at the conclusion of Staff's Report). Also, please be advised that despite the ruling of the Board, Staff will be unable to approve the site plan as submitted because it does not comply with federal regulations regarding accessible design. Lastly, restrictive covenants (executed by the applicant) for the Miramar Lakeside Business Center subdivision – attached hereto and incorporated herein as Exhibit F – prohibit driveways, approaches and parking areas constructed of rock, sand, stone, gravel, dirt, or similar.

The applicant would like to construct storage facilities totaling twenty-nine thousand seven hundred (29,700) square feet on the subject property. The subject property is zoned LI Limited Industrial. Vehicle Storage (Short-term), Vehicle Storage (Long-term), and Warehousing (Enclosed) are all listed as permitted uses in LI Limited Industrial zoning districts.

The lot has been platted and contains approximately 114,000 square feet. According to our calculations, after building setbacks and easements are taken into consideration, there remains approximately 77,000 square feet of buildable area on the lot – sufficient for reasonable use of the land.

According to subsection 902.a., Fremont Zoning Ordinance (FZO), "Off-street parking shall be provided for any new building constructed; for new uses or conversions of existing buildings; or for enlargements of existing structures." Subsection 903, FZO, continues to read, "Parking facilities for each use shall be provided in accord with the minimum requirements set forth in Table 9-1." Table 9-1 requires one (1) parking space for every five thousand (5,000) square feet of Indoor Storage or Warehousing.

Subsection 906.b., FZO, requires off-street parking facilities to be "surfaced with concrete, asphalt, asphaltic concrete, or brick and shall be maintained with materials sufficient to prevent

mud, dust.” Parking facilities are defined as, “An area on a lot and/or within a building, including one or more parking spaces, **along with provision for access circulation, maneuvering,** and landscaping, meeting the requirements of this Zoning Ordinance.” (FZO § 219.1.) **[emphasis added]**

Accessible Design

Also, please keep in mind that new construction is required to comply with the International Building Code (IBC) [c. 2012], Title III regulations at 28 Code of Federal Regulations (CFR) part 36, subpart D [c. 2010], and the 2004 Americans with Disabilities Act Accessibility Guidelines (ADAAG) at 36 CFR part 1191, appendices B and D [c. 2010].

Subsection 1104.2., IBC, reads, “At least one *accessible route* shall connect *accessible* buildings, *accessible* facilities, *accessible* elements and *accessible* spaces that are on the same *site*.”

Subsection 1104.3, IBC, continues, “When a building or portion of a building is required to be *accessible*, an *accessible route* shall be provided to each portion of the building, to *accessible* building entrances connecting *accessible pedestrian walkways* **and the public way.**” **[emphasis added]**

Subsection 1106.1, IBC, also requires, “Where parking is provided, *accessible* parking spaces shall be provided in compliance with Table 1106.1, except as required by Sections 1106.2 through 1106.4. Where more than one parking facility is provided on a *site*, the number of parking spaces required to be *accessible* shall be calculated separately for each parking facility.” Subsection 1106.6, IBC, continues, “*Accessible* parking spaces shall be located on the shortest *accessible route* of travel from adjacent parking to an *accessible* building entrance. In parking facilities that do not serve a particular building, *accessible* parking spaces shall be located on the shortest route to an *accessible* pedestrian entrance to the parking facility. Where buildings have multiple *accessible* entrances with adjacent parking, *accessible* parking spaces shall be dispersed and located near the *accessible* entrances.”

Subsection 905, FZO, also requires, “Each off-street parking facility shall provide the number of parking spaces set forth in Table 9-2 designed and designated for use by people with disabilities. Every eighth parking space shall be van accessible. Design criteria and dimensions are set forth in the Off-Street Parking Design Standards and the requirements of the Americans with Disabilities Act.” Subsection 302.1, ADAAG, requires “**Floor and ground surfaces shall be stable, firm, and slip resistant and shall comply with 302.**” The advisory associated with subsection 302.1 reads, “A stable surface is one that remains unchanged by contaminants or applied force, so that when the contaminant or force is removed, the surface return to its original condition. A firm surface resists deformation by either indentations or particles moving on its surface. A slip-resistant surface provides sufficient frictional counterforce to the forces exerted in walking to permit safe ambulation.” Loose aggregate surfaces, such as those proposed by the applicant, do not comply with ADAAG requirements. **[emphasis added]**

Nebraska Revised Statutes relating to the Board of Adjustment and Variances

Nebraska Revised Statutes (NRS) section 19-907 requires the local legislative body [enforcing zoning regulations] to provide for the appointment of a board of adjustment (Board) – any action of which shall not exceed the powers granted to it by the State. NRS section 19-910, and similarly FZO § 129.c., details the powers of the Board as follows:

(1) The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the legislative body, have only the following powers: (a) To hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures, except that the authority to hear and decide appeals shall not apply to decisions made under subsection (3) of section 19-929; (b) to hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map; and (c) when by reason of exceptional narrowness, shallowness, or shape of a specific piece of property **at the time of the enactment of the zoning regulations**, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this section and sections 19-901, 19-903 to 19-904.01, and 19-908 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any ordinance or resolution.

(2) No such variance shall be authorized by the board **unless it finds** that: (a) The strict application of the zoning regulation would produce undue hardship; (b) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (c) the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; **and** (d) the granting of such variance is based upon reason of demonstrable and exceptional hardship **as distinguished from variations for purposes of convenience, profit, or caprice. No variance shall be authorized unless the board finds** that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

(3) In exercising the powers granted in this section, the board may, in conformity with sections 19-901 to 19-915, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have

all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation. **[emphasis added]**

Subsection 1209.c.2., FZO, continues to read, “The Board of Adjustment shall make findings that the requirements of Section 1209.c.1. have been met by the applicant for a variance.” And, subsection 1209.c.3, FZO, “Conditions for Grant of Variance. (a) In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with these regulations. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of these regulations and punishable under Section 1214 of these regulations. (b) Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of these regulations in the district involved, or any use expressly or by implication prohibited by the terms of these regulations in said district. (c) No non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.”

Case Law

In the case of *Frank v. Russell*, the Scottsbluff, Nebraska, Board of Adjustment granted a variance, reducing the building setback from forty (40) feet to twenty-seven (27) feet, to allow for the construction of a residential building. The neighbors appealed the decision to District Court. The District Judge upheld the decision of the Board of Adjustment. The decision was then appealed to the Nebraska Supreme Court. The state supreme court reversed the decision of the lower court, finding the decision “unreasonable and arbitrary” and that the variance was “destructive ... of the spirit of the ordinance.” The court focused specifically on the fact that the owners created their own hardship with knowledge of what the ordinances prohibited – specifically, “It would certainly be unreasonable to allow one to create his own hardship and difficulty and take advantage of it to the prejudice of innocent parties.” The courts also provided the following:

It appears that the rule respecting the right of a board of adjustment, such as the one here, to grant a variance from zoning regulations on the ground of unnecessary hardship **is generally that it may not be granted:** Unless the denial would constitute an unnecessary and unjust invasion of the right of property; **if the grant relates to a condition or situation special and peculiar to the applicant; if it relates only to a financial situation or hardship to the applicant; if the hardship is based on a condition created by the applicant; if the hardship was intentionally created by the owner;** if the variation would be in

derogation of the spirit, intent, purpose, or general plan of the zoning ordinance; if the variation would affect adversely or injure or result in injustice to others; or ordinarily if the applicant purchased his premises after enactment of the ordinance. [**emphasis added**]

In the case of *Alumni Control Board v. City of Lincoln*, a fraternity requested a variance that would allow it to construct a larger building than was allowed by the city zoning code and that would allow it to vary off-street parking requirements. The requested variance was denied by the zoning board of appeals, and the district court. The Nebraska Supreme Court affirmed the denial pointing out that the requirements imposed by the code were reasonable, and that granting the variances would “be in derogation of the spirit and intent and general plan of the zoning ordinance.” Ultimately, the court concluded that the “mere fact that the plaintiff would like to have a fraternity house of larger dimensions does not establish practical difficulty in complying with the ordinance.”

In the case of *Bowman, v. City of York*, a company applied for a variance that would allow it to build the rear wall of a warehouse within one foot of the property line that divided its property from the residential property of the Bowmans, whereas the zoning code required a fifteen foot setback. The board of adjustment granted the variance and the Bowmans appealed. In this case the District Court reversed the granting of the variance and the decision was appealed to the Nebraska Supreme Court. The Supreme Court found that the application of the code would not produce undue hardship. The court also held that the company’s sole stated hardship, wanting to increase profits, did not constitute sufficient hardship to justify granting a variance, stating that “it does not provide a basis for riding roughshod over the rights of others by obtaining a variance from zoning regulations with which the rest of the community must live.”

In summary, the Nebraska Supreme Court, as demonstrated herein, has established significant guidance to Boards considering variance requests. First, there is not sufficient hardship when the party seeking the variance created their own hardship, secondly, simply wanting to deviate from zoning regulations does not alone constitute sufficient hardship, and finally, wanting to increase profits does not alone constitute sufficient hardship.

Fiscal Impact: N/A

APPEAL/EXCEPTION/VARIANCE APPLICATION

APPLICATION

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. (Nebraska Revised Statutes (NRS) § 19-909)

According to subsection 3.b., of Article III, of the Board of Adjustment By-laws/Rules of Procedure, no application shall be accepted unless and until such time as the following requirements have been provided by the applicant. "i. A statement from the applicant justifying the variance requested, indicating specifically the provisions of the Zoning Ordinance from which the variance is requested and to what degree such a variance is requested, including the hardship imposed by the strict application of the Zoning Ordinance. ii. A specific statement outlining in detail the manner in which it is believed that this application will meet the requirements of the Zoning Ordinance. iii. A sketch, drawn to scale, showing the lot or lots included in the application; the structures existing thereon; and the structure or use contemplated necessitating the variance requested." [emphasis added]

CHECKLIST *(the following items must be submitted as part of the application process)*

- A. Application *(including fees)*
- B. A copy of the owner's deed(s) for the subject property.
- C. A *statement* (i.e. letter addressed to the Board), as described above, responding to the general criteria applicable to appeals, exceptions and variances (ref. Fremont Zoning Ordinance (FZO) § 1208)
- D. A copy of the plat, survey, surveyor's field notes (including *sketch* of the subject property) or other illustration sufficient to locate the subject property on the ground.

Please note that your application will not be accepted or there may be a delay in processing by the Planning Department if any of the required information or materials are missing or improperly presented. To avoid unnecessary delays in processing, please remember to submit the appropriate submittal requirements, i.e., signed application, fees, and all supporting documentation. If you have any questions regarding this application or required materials, please contact the Planning Department at 402-727-2636 between 8:00 am and 4:30 pm, Monday through Friday.

APPEAL/EXCEPTION/VARIANCE APPLICATION

Application Type
<input type="checkbox"/> Appeal
<input type="checkbox"/> Interpretation of any map
<input checked="" type="checkbox"/> Variance

APPLICANT (all correspondence will be directed to the applicant)

VICTORY LAKE MARINE, INC.
 Name RONALD G. VLACH, PRESIDENT Phone 402-721-1341
 Address 1500 WEST MILITARY AVE. Fax _____
 City FREMONT State NE Zip 68025
 Email rvlach@victorymarine11c.com

PROPERTY OWNER (if not the same as applicant above)

Name _____ Phone _____
 Address _____ Fax _____
 City _____ State _____ Zip _____
 Email _____

ENGINEER, SURVEYOR, OR ARCHITECT (if not the same as applicant above)

Dodd Engineering & Surveying LLC
 Name Stephen W. Dodd, President Phone 402-720-5017
 Address P.O. Box 1855 Fax _____
 City Fremont State NE Zip 68026
 Email doddeng1@gmail.com

AGENT (if not the same as applicant above)

Name _____ Phone _____
 Address _____ Fax _____
 City _____ State _____ Zip _____
 Email _____

(application continued on next page)



Planning & Development
400 E. Military Ave.
Fremont, NE 68025
Phone: 402-727-2636
Fax: 402-727-2659

APPEAL/EXCEPTION/VARIANCE APPLICATION

PROPERTY INFORMATION

Address of Property 1708 MIRAMAR CIRCLE
General Location (if no address is available) _____

Brief Legal Description of Property LOT 5, MIRAMAR LAKESIDE BUSINESS CENTER

Description of Request (the following does not satisfy the "statement" requirement as described herein; a separate "statement" is required to be considered complete) _____

PAYE DRIVEWAY WITH CRUSHED CONCRETE IN LIEU OF
POURED CONCRETE OR ASPHALT

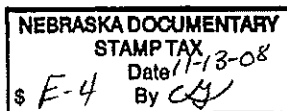
An application may be filed only by the owner(s) of the property, or duly authorized officer or agent of the owner(s). By executing this application, he/she does hereby acknowledge the above statements to be true and accurate to the best of their knowledge, and understand that knowing and willful falsification of information will result in rejection of the application and may be subject to criminal prosecution.

I have received, read and understand the terms and conditions of this request, and agree to compliance with all applicable codes and ordinances of the City.

[Signature] RON VLACH 5-27-15
Signature Print Name Date

Office Use Only

Submittal Date _____ Project No. _____
Payment Amount _____ Receipt No. _____
Other Comments _____



FILED
BOOK 2008 PAGE 6241
2008 NOV 13 AM 9:56

Carol Livens
DODGE COUNTY
REGISTER OF DEEDS
COMPARE INDEX FEE \$ 5.50

CORRECTION WARRANTY DEED

Miramar, LLC, a Nebraska Limited Liability Company, GRANTOR, in consideration of VALUABLE CONSIDERATION AND ONE DOLLAR AND NO/100THS DOLLARS (\$1.00) received from GRANTEE, Victory Lake Marine, Inc., a Nebraska Corporation, conveys to GRANTEE, the following-described real estate (as defined in R.R.S 1943 §76-201):

Lot 5, Miramar Lakeside Business Center, Fremont,
Dodge County, Nebraska.

GRANTOR covenants with GRANTEE that GRANTOR:

- (1) is lawfully seised of such real estate and that it is free from encumbrances except easements and restrictions of record;
- (2) has legal power and lawful authority to convey the same;
- (3) warrants and will defend title to the real estate against the lawful claims of all persons.

Dated this 11 day of November, 2008.

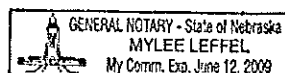
MIRAMAR, LLC, a Nebraska Limited Liability
Company, Grantor

William J. Ekeler

William J. Ekeler, President

STATE OF NEBRASKA)
) ss.
COUNTY OF DODGE)

The foregoing instrument was acknowledged before me on the 11 day of November, 2008, by William J. Ekeler, President of Miramar, LLC, a Nebraska Limited Company, Grantor.



Mylee Leffel

Notary Public

Yost

Troy Anderson, Zoning Administrator
Members of the Fremont Board of Adjustment

Dear Board Members and Zoning Administrator:

I wish to construct the facility shown in the drawing submitted herewith for the storage of boats and related equipment. As you can see Lot 5 is extremely deep and relatively narrow. In addition there is an 18" high pressure gas main at the south lot line with a 45' easement. There is also a steep slope to the lake on the north side. In order to make full use of the lot and meet building code regulations I am proposing 3 structures on the site. In order to access all the buildings there has to be long driveway. All portions of the building and zoning ordinances will be met with the exception that crushed concrete surfacing will be used in lieu of concrete or asphalt as required by Section 906 (b). I have answered the 6 criteria from the City's Zoning Ordinance below. I believe this is a truly unique and difficult site and need your help in order to develop this lot to its highest and best use.

(a) Strict application of the zoning regulations will produce undue hardship.

The exceptional depth and narrowness of the lot, the high pressure gas main on the south with a 45' easement and the steep slope on the north make it impractical to fully develop the lot without an exceptional amount of paving or other extreme measures such as combining the 3 proposed buildings into 1 huge building with a sprinkler system.

(b) Such hardship is not shared generally by other properties in the same zoning district and in the same vicinity.

The lot is roughly twice as deep as other lots in the same subdivision. It has a 45' Northern Natural Gas easement on the south and a steep slope on the north toward the lake which severely limit the practical buildable width. Northern Natural takes a dim view of paving near the 18" high pressure gas main, but will consider granular surfacing such as submitted. These hardships are not shared by other similarly zoned lots.

(c) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.

The majority of the crushed concrete surfacing will be on the south facing away from other buildings in the subdivision. The nearest developed property to the proposed surfacing is the YMCA camp to the west which has a drive and parking lot surfaced with similar material. The proposed development is for storage of boats and related equipment and will have minimal traffic.

(d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.

Lot 5 is truly a challenge to develop. The only practical way to fully develop the lot is with multiple structures similar to the plan submitted. If some relaxation is not granted, most of the lot will be rendered useless.

(e) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to these Zoning Regulations.

There are no other lots in this subdivision and perhaps in the entire community with the particular combination of development challenges imposed by this site.

(f) The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any Ordinance or Resolution.

This situation is truly unique to this lot and should not adversely affect the public good and the administration of any related ordinances or resolutions.

Thank you for your consideration,

Sincerely,

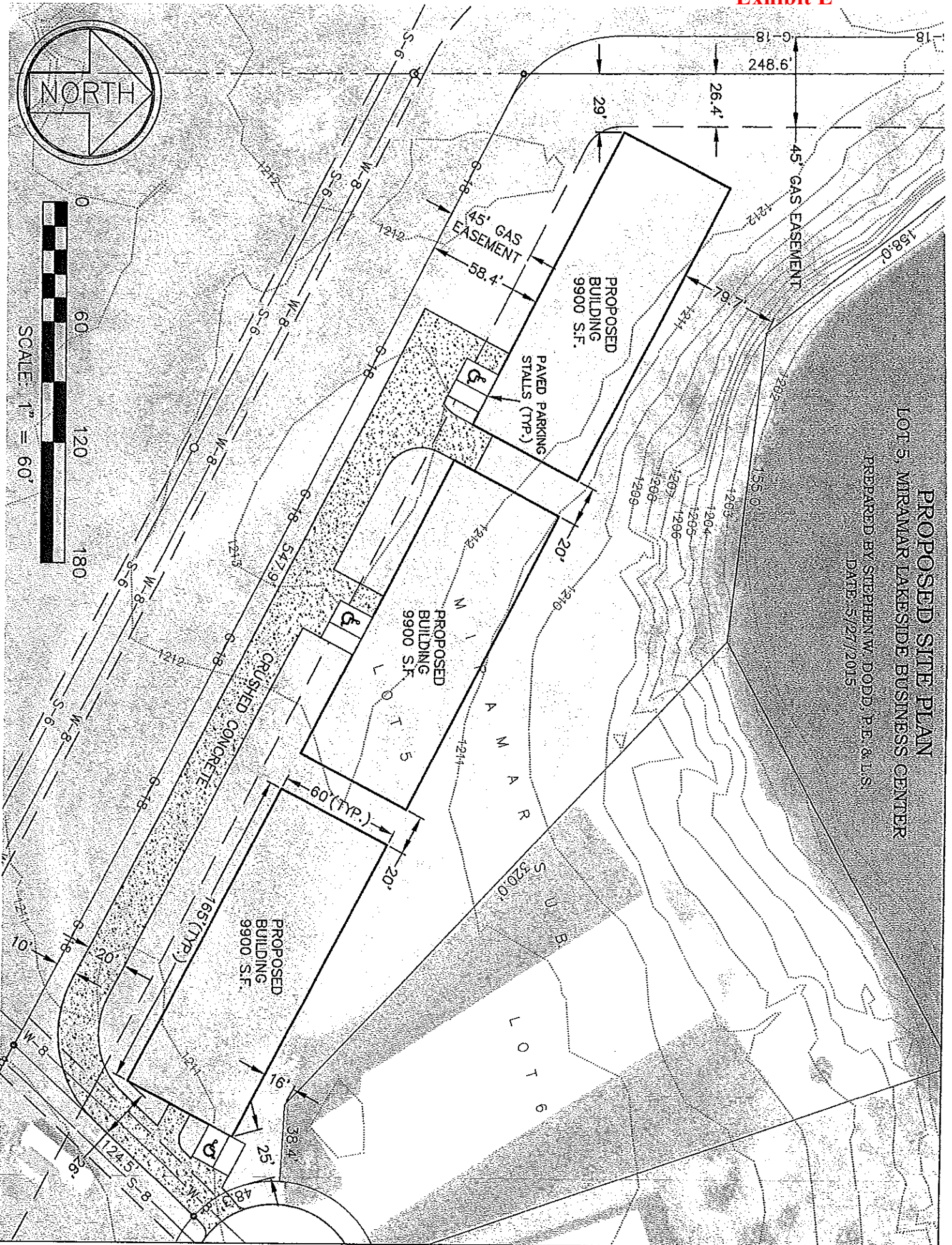
A handwritten signature in black ink, appearing to read "Victor Marine". The signature is written in a cursive style with a prominent initial "V".

PROPOSED SITE PLAN

LOT 5, MIRAMAR LAKESIDE BUSINESS CENTER

PREPARED BY STEPHEN W. DODD, P.E. & L.S.

DATE: 5/27/2015



DECLARATION OF RESTRICTIVE COVENANTS
MIRAMAR LAKESIDE BUSINESS CENTER
LOTS 1 THROUGH 16, FREMONT, DODGE COUNTY, NEBRASKA

BOOK 2006 PAGE 0238
2006 JAN 10 PM 2:37

Miramar LLC, a Nebraska Limited Liability Company, is the owner of Lots 1 through 17 of Miramar Lakeside Business Center, Fremont, Dodge County, Nebraska (the subdivision) and hereby creates, declares and establishes the following restrictive covenants which shall run with the land and remain in full force and effect for a period of not less than 21 years unless previously amended or rescinded by the written consent of the owners of record of not less than two-thirds of the lots in the subdivision. Said restrictive covenants are as follows:

1. **BUILDING PLANS.** Before commencing construction of buildings, enclosures, fences, loading docks, parking facilities, storage yards, or any other structures or permanent improvements on or to any site or lot within the subdivision, the property owner shall first submit site plans or plans and specifications to the President of Miramar LLC, or its duly authorized agent, or to its successors or assigns, for written approval as to quality of workmanship and materials, harmony of external design, building color, size, and existing structures. The principal building to be erected on a lot will be of metal construction with a minimum of 1,600 square feet. Building color will be based on the Chief Building Standard Color and Finishes Chart.
2. **PARKING, DRIVEWAYS AND APPROACHES.** All driveways, approaches, and parking areas on any lot will be either concrete or asphalt surfaces. Surfaces of rock, sand, stone, gravel, dirt, or other similar will not be permitted.
3. **LANDSCAPING.** All grounds which surround each building shall be fully landscaped to include grass planted, mowed and maintained on the street side of the development.
4. **OUTDOOR STORAGE.** No outdoor storage will be permitted on any lot in the subdivision unless a principal building has been erected on the lot. In addition, any items being stored outside shall be screened from public view by fence or screened panel.
5. **SIGNS.** No signs will be permitted on any lot within the subdivision with the exception of one sign to be attached to the principal structure erected on said lot which advertises the name and business of the owner or occupant, and one sign setting forth the building's address. All signs shall be subject to prior written approval by the President of Miramar LLC, or its duly authorized agent, or its successors or assigns.
6. **LAKE ACCESS.** All lot owners shall have access to the lake adjacent to the subdivision, with one lot permitted no more than one boat on the lake at any one time. In addition, the following shall apply to all lake usage:
 - a. The only motor permitted on any boat on the lake will be an electric trolling motor;
 - b. No boat shall be operated in such a manner so as to create a wake;

- c. No docks, boat lifts, or any other type of boat storage or parking structure or device, temporary or permanent, will be permitted on or near the lake shore line;
- d. The lake owner shall have the right to prohibit lake usage by any person who operates any boat, raft, or other floatation device on the lake in such a manner so as to be dangerous to any birds, animals, or persons on or about the lake.
- e. Lake usage is granted to all lot owners at the discretion of the owner of the lake, lot #17. Special use allowing motorized watercraft may be obtained on a single use basis in writing from the owner of Lot #17.

7. HUNTING AND DISCHARGE OF FIREARMS. There shall be no hunting within the subdivision and the discharge of firearms is specifically prohibited within the subdivision, to include the lake adjacent to the subdivision.

8. HAZARDOUS AND TOXIC SUBSTANCES PROHIBITED. The storage, use or disposal of any hazardous or toxic substance on any lot within the subdivision shall be strictly prohibited.

9. EQUIPMENT, MATERIALS AND SUPPLIES USED IN A LOT OWNER'S BUSINESS. All equipment, materials and supplies used in the operation of the business of a lot owner or any business conducted on a lot within the subdivision shall be stored in secure enclosures, so as not to be visible from roadways and so as not to be hazardous to the public. All trash receptacles shall be covered and screened from public view.

Dated: January 19, 2004.

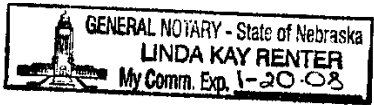
Four Longhorns LLC, a Nebraska Limited Liability Company

By: Bill Ekelor
Member

STATE OF NEBRASKA)
)ss
COUNTY OF DODGE)

On this 6th day of January, 2006, before me a Notary Public in and for said county, personally appeared Bill Ekelor, a Member of Four Longhorns LLC, a Nebraska Limited Liability Company, to me personally known to be the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution of the same to be his voluntary act and deed, for the purpose therein set forth.

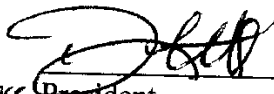
WITNESS, my hand and official seal the day and year last above written.



Linda Kay Renter
Notary Public

Falcon Properties, Inc., a Nebraska
Corporation

By:


Vice President

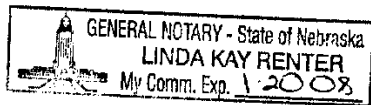
STATE OF NEBRASKA)

)ss

COUNTY OF DODGE)

On this 10th day of January, 2006, before me a Notary Public in and for said county, personally appeared Dave Mitchell of Falcon Properties, Inc., known to me to be the President and identical person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation and that its corporate seal was thereto affixed by its authority.

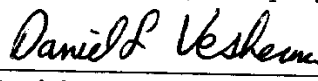
WITNESS, my hand and official seal the day and year last above written.



Linda Kay Renter
Notary Public

Eagle Development, LLC, a Nebraska
Limited Liability Company

By:


Daniel L. Veskerna

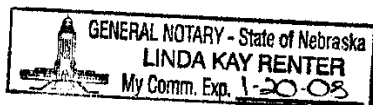
STATE OF NEBRASKA)

)ss

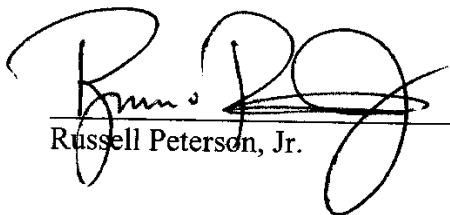
COUNTY OF DODGE)

On this 10th day of January, 2006, before me a Notary Public in and for said county, personally appeared Daniel L. Veskerna, a Member of Eagle Development, LLC, a Nebraska Limited Liability Company, to me personally known to be the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution of the same to be his voluntary act and deed, for the purpose therein set forth.

WITNESS, my hand and official seal the day and year last above written.



Linda Kay Renter
Notary Public

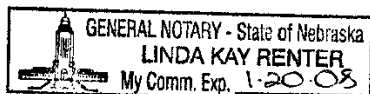


 Russell Peterson, Jr.

STATE OF NEBRASKA)
)ss
 COUNTY OF DODGE)

On this 10th day of January, 2006, before me a Notary Public in and for said county, personally appeared Russell Peterson, Jr. to me personally known to be the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution of the same to be his voluntary act and deed, for the purpose therein set forth.

WITNESS, my hand and official seal the day and year last above written.



Linda Kay Renter

 Notary Public

Victory Lake Marine, Inc., a Nebraska Corporation

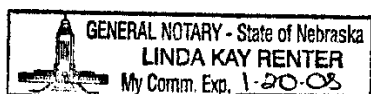
By: Ronald H. Vlach

 President

STATE OF NEBRASKA)
)ss
 COUNTY OF DODGE)


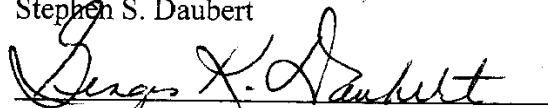
On this 10th day of January, 2006, before me a Notary Public in and for said county, personally appeared Ronald Vlach of Victory Lake Marine, Inc., known to me to be the President and identical person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation and that its corporate seal was thereto affixed by its authority.

WITNESS, my hand and official seal the day and year last above written.



Linda Kay Renter

 Notary Public

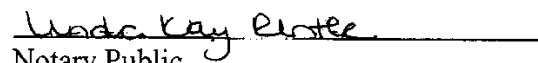

Stephen S. Daubert

Ginger K. Daubert

STATE OF NEBRASKA)
)ss
COUNTY OF DODGE)

On this 0th day of January, 2006, before me a Notary Public in and for said county, personally appeared Stephen S. Daubert and Ginger K. Daubert, husband and wife, to me personally known to be the identical persons whose names are affixed to the foregoing instrument, and acknowledged the execution of the same to be their voluntary act and deed, for the purpose therein set forth.

WITNESS, my hand and official seal the day and year last above written.




Notary Public

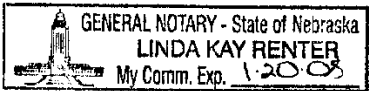
JOHASOE, LLC, a Nebraska Limited Liability Company

By: [Signature]
Member

STATE OF NEBRASKA)
)ss
COUNTY OF DODGE)

On this 10th day of January, 2006, before me a Notary Public in and for said county, personally appeared Mark Johansen, a Member of JOHASOE, LLC, a Nebraska Limited Liability Company, to me personally known to be the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution of the same to be his voluntary act and deed, for the purpose therein set forth.

WITNESS, my hand and official seal the day and year last above written.



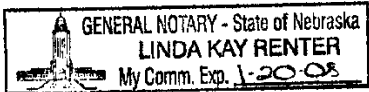
Linda Kay Renter
Notary Public

[Signature]
Richard J. Seitz

STATE OF NEBRASKA)
)ss
COUNTY OF DODGE)

On this 10th day of January, 2006, before me a Notary Public in and for said county, personally appeared Richard J. Seitz and Carole J. Seitz, husband and wife, to me personally known to be the identical persons whose names are affixed to the foregoing instrument, and acknowledged the execution of the same to be their voluntary act and deed, for the purpose therein set forth.

WITNESS, my hand and official seal the day and year last above written.

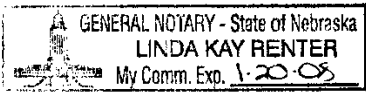


Linda Kay Renter
Notary Public

John L. Ekeler
John L. Ekeler, Trustee
Judy K. Ekeler
Judy K. Ekeler, Trustee

STATE OF NEBRASKA)
)ss
COUNTY OF DODGE)

On this 0th day of January, 2006, before me a Notary Public in and for said county, personally appeared John L. Ekeler, Trustee, and Judy K. Ekeler, Trustee, to me personally known to be the identical persons whose names are affixed to the foregoing instrument, and acknowledged the execution of the same to be their voluntary act and deed, for the purpose therein set forth.
WITNESS, my hand and official seal the day and year last above written.

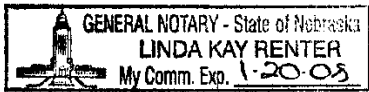


Linda Kay Renter
Notary Public

Leslie B. Shallberg
Leslie B. Shallberg
Koni M. Shallberg
Koni M. Shallberg

STATE OF NEBRASKA)
)ss
COUNTY OF DODGE)

On this 0th day of January, 2006, before me a Notary Public in and for said county, personally appeared Leslie B. Shallberg and Koni M. Shallberg, husband and wife, to me personally known to be the identical persons whose names are affixed to the foregoing instrument, and acknowledged the execution of the same to be their voluntary act and deed, for the purpose therein set forth.
WITNESS, my hand and official seal the day and year last above written.



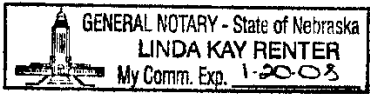
Linda Kay Renter
Notary Public

Waterfront, LLC, a Nebraska Limited
Liability Company
By: [Signature]
Member

STATE OF NEBRASKA)
)ss
COUNTY OF DODGE)

On this 0th day of January, 2006, before me a Notary Public in
and for said county, personally appeared Dave Mitchell, a
Member of Waterfront, LLC, a Nebraska Limited Liability Company, to me personally
known to be the identical person whose name is affixed to the foregoing instrument, and
acknowledged the execution of the same to be his voluntary act and deed, for the purpose
therein set forth.

WITNESS, my hand and official seal the day and year last above written.



Linda Kay Renter
Notary Public